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Patricia S. Connor
Clerk of Court
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23129

Re: B.P.J. v. West Virginia et al., No. 23-1078

Dear Clerk Connor:

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff responds to Defendants' letter regarding *Eknes-Tucker v. Governor of Alabama*, 2023 WL 5344981 (11th Cir. Aug. 21, 2023) (Dkt. 177). That decision has no bearing on this case.

First, *Eknes-Tucker* applied rational basis review. (Op. 37, 41.) By contrast, Defendants here concede that H.B. 3293 facially discriminates based on sex and is subject to heightened scrutiny. (Def. Br. (Dkt. 89) at 25-26.)

Second, *Eknes-Tucker* declined to recognize transgender status as a quasi-suspect classification. (Op. 46.) By contrast, this Court has already done so. See *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 610 (4th Cir. 2020); (Pl. Br. (Dkt. 52) at 31).

Third, *Eknes-Tucker* declined to consider *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), in analyzing the Equal Protection Clause claim. (Op. 44.) Defendants contend that this Court should do likewise with respect to Title IX (Dkt. 177 at 2), but this Court has repeatedly held that *Bostock* applies to Title IX. See *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 130 n.22 (4th Cir. 2022) (en banc); *Grimm*, 972 F.3d at 616; (Pl. Br. at 47).

Finally, *Eknes-Tucker* concerned a criminal prohibition of gender affirming health care for minors in Alabama, whereas this case concerns the categorical ban of transgender girls from girls' school sports teams in West Virginia as applied to a single middle-school girl who is transgender. That Defendants seek to conflate these two cases confirms that the function and purpose of H.B. 3293 is to discriminate against transgender girls, not to genuinely advance the governmental interest in protecting equal athletic opportunity. (Pl. Br. at 45-46.)

Sincerely,

/s/ Julie Veroff

Julie Veroff